

**THE TENNESSEE REGULATORY AUTHORITY**

## AT NASHVILLE, TENNESSEE

IN RE:

**JANUARY 18, 2002**

ALLEGED VIOLATIONS OF TENN.  
CODE ANN. §65-4-401 *et seq.*, DO-NOT-  
CALL SALES SOLICITATION LAW,  
AND RULES OF TENNESSEE  
REGULATORY AUTHORITY, CHAPTER  
1220-4-11, BY:

DOCKET NO. 01-00903

RESTHAVEN MEMORIAL  
GARDENS, INC.

## ORDER APPROVING SETTLEMENT AGREEMENT

This matter came before the Tennessee Regulatory Authority (“Authority” or “TRA”) at a regularly scheduled Authority Conference held on January 8, 2002, for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (the “CSD”) and Resthaven Memorial Gardens, Inc. (“Resthaven”) for violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statutes, Tenn. Code Ann. § 65-4-401 *et seq.* The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11-.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to any residential subscribers in this state who have given timely and proper notice to the Authority of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires persons or entities desiring to make telephone

solicitations to residential subscribers to register in the Do-Not-Call program. Tenn. Code Ann. § 65-4-405(f) authorizes the Authority to initiate proceedings relative to violations of the Do-Not-Call statutes and the TRA rules and regulations (Tenn. Comp. R. & Regs. 1220-4-11-.01 *et seq.*) promulgated pursuant to the Do-Not-Call statutes. "Such proceedings may include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation and to seek additional relief in any court of competent jurisdiction." Tenn. Code Ann. § 65-4-405(f).

On June 18, 2001, the CSD received a complaint against Resthaven from a Tennessee consumer whose residential telephone number was properly and timely registered on the Tennessee Do-Not-Call Register. During the investigation of this complaint, the CSD determined that Resthaven was not registered as a solicitor at the time the solicitation was made in violation of Tenn. Code Ann. § 65-4-405(d)(3). Resthaven Life faced a maximum civil penalty of four thousand dollars (\$4,000) for the two (2) violations arising from the solicitation and the failure to register in the Do-Not-Call program.

The proposed Settlement Agreement was negotiated as the result of the CSD's investigation into the complaint against Resthaven. In negotiating the terms and conditions of this Settlement Agreement, the CSD took into consideration Tenn. Code Ann. § 65-4-116(b), which provides:

In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm or corporation charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, may be deducted from any sums owing by the state to the person, firm or corporation charged or may be recovered in a civil action in the courts of this state.

Resthaven is a corporation headquartered in Clarksville, Tennessee with approximately twenty workers. The CSD's investigation revealed that Resthaven has no known history of violating the statutes and rules enforceable by the Authority and has not engaged in a pattern of continued violations of Tenn. Code Ann. § 65-4-401 *et seq.* Upon receiving notice of the alleged violation, Resthaven cooperated with the CSD's investigation of the above mentioned complaint and registered in the Tennessee Do-Not-Call Program on October 12, 2001.

As a part of this Settlement Agreement, Resthaven agrees to implement measures, as outlined in Exhibit A, to prevent similar occurrences in the future. In addition, Resthaven will pay to the Authority a civil penalty in the amount of two thousand dollars (\$2,000), in two (2) payments of one thousand dollars (\$1,000) each. The first payment of one thousand dollars (\$1,000) was accepted on the date the Authority approved the Settlement Agreement. The remaining installment of one thousand dollars (\$1,000) shall be paid no later than the first business day of the next month that is thirty (30) days after the first payment.

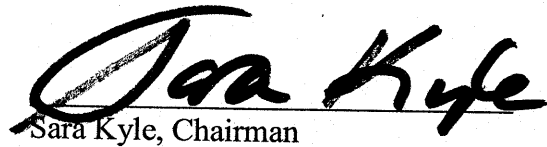
A company representative attended the Authority Conference on January 8, 2002. Following a discussion with the parties and a review of the Settlement Agreement, the Directors voted unanimously to accept and approve the Settlement Agreement.

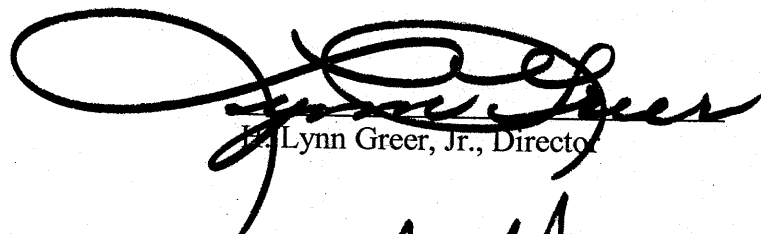
**IT IS THEREFORE ORDERED THAT:**

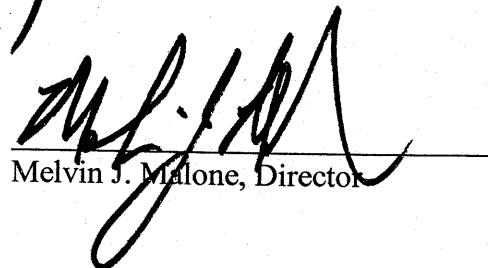
1. The Settlement Agreement, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.

2. The amount of two thousand dollars (\$2,000) shall be paid by Resthaven into the Public Utilities Account of the TRA in two (2) payments of one thousand dollars (\$1,000) each. The first payment of one thousand dollars (\$1,000) was accepted on the date the Authority approved the Settlement Agreement. The remaining installment of one thousand dollars (\$1,000) shall be paid no later than the first business day of the next month that is thirty (30) days after the first payment.

3. Upon payment of the amount of two thousand dollars (\$2,000), Resthaven is excused from further proceedings in this matter, provided that, in the event of any failure on the part of Resthaven to comply with the terms and conditions of the Settlement Agreement, the Authority reserves the right to re-open this docket.

  
Sara Kyle, Chairman

  
Lynn Greer, Jr., Director

  
Melvin J. Malone, Director

ATTEST:

  
K. David Waddell, Executive Secretary

THE TENNESSEE REGULATORY AUTHORITY  
AT NASHVILLE, TENNESSEE

PAID T.R.A.

Chk # 25473

Amount 1,000.00

Rcvd By SC

Date 12/11/81

IN RE:

ALLEGED VIOLATIONS OF TENN.  
CODE ANN. §65-4-401 *et seq.*, DO-NOT-  
CALL SALES SOLICITATION LAW,  
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INC.

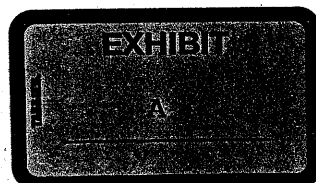
DOCKET NO. 01-00903

DO-NOT-CALL T01-00376  
PROGRAM  
FILE NUMBER

SETTLEMENT AGREEMENT

This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Resthaven Memorial Gardens, Inc. ("Resthaven") and is subject to the approval of the Directors of the TRA. Resthaven, a company employing approximately twenty (20) workers, is located in Clarksville, Tennessee.

This Settlement Agreement pertains to a complaint received by the CSD alleging that Resthaven violated the Tennessee Do-Not-Call Telephone Sales Solicitation law, TENN. CODE ANN. § 65-4-404, and TENN. COMP. R. & REGS. 1220-4-11.07(1), by knowingly making or causing to be made telephone sales solicitation calls to a residential subscriber in this state who had given timely and proper notice to the TRA of their objection to receiving telephone solicitations. A complaint filed with the CSD on June 18,



2001 alleges that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Resthaven on June 12, 2001. The CSD provided Resthaven with notice of this complaint on June 18, 2001.

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by Resthaven in this proceeding is four thousand dollars (\$4,000). CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b) during the negotiations, which resulted in this agreement, including Resthaven's size, financial status, good faith, and the gravity of the violation.

In an effort to resolve this matter, represented by the file number above, CSD and Resthaven agree to settle this complaint based upon the following acknowledgements and terms subject to approval by the Directors of the TRA:

1. Resthaven admits that the complaint against it is a true and valid complaint and in violation of TENN. CODE ANN. §65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).
2. Resthaven registered with the TRA as a telephone solicitor on October 12, 2001 and receives a monthly copy of the Do-Not-Call Register.
3. After receiving notice of the complaint that is the subject of this agreement, Resthaven acted in a very cooperative manner by contacting CSD and expressing an interest in settling the complaint. Resthaven and its counsel met with CSD staff and proposed

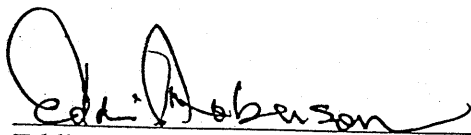
methods for preventing future violations of TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).

4. Resthaven agrees to a settlement payment of two thousand dollars (\$2,000.00) for this complaint as authorized by TENN. CODE ANN. §65-4-405(f), and agrees to remit the amount of one thousand dollars (\$1,000.00) to the TRA Office of the Executive Secretary on the day the Directors of the TRA approve this Settlement Agreement. The remaining installment of one thousand dollars (\$1,000.00) shall be remitted no later than the first business day of the next month that is thirty (30) days after the first payment.<sup>1</sup> Upon payment of the amount of two thousand dollars (\$2,000.00) in compliance with the terms and conditions of this Settlement Agreement, Resthaven is excused from further proceedings in this matter.
5. Resthaven agrees to comply with all provisions of The Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations. Although the company voluntarily subscribes to the TRA's Do-Not-Call Register and has in place policies and procedures designed to prevent calls to Tennessee residents, Resthaven on its own accord, has instituted additional procedures to further minimize the potential for telephone solicitation calls to Tennessee consumers whose residential telephone numbers are registered on the Tennessee Do-Not-Call Register.

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<sup>1</sup> The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville TN 37243, referencing TRA Docket Number 01-00903.

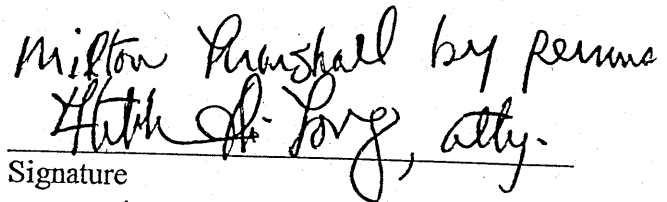
6. Resthaven agrees that a company representative will attend the Authority Conference at which time the Directors consider this Settlement Agreement.
7. In the event of any failure on the part of Resthaven to comply with the terms and conditions of this agreement, the Authority reserves the right to re-open this docket.
- Any costs incurred in enforcing the Settlement Agreement shall be paid by Resthaven.



Eddie Roberson  
Chief, Consumer Services Division  
Tennessee Regulatory Authority

12-13-01

Date

  
Hutch A. Long, atty.

Signature

Milton Marshall

Print Name

President

Print Title

Resthaven Memorial Gardens, Inc.

12-6-01

Date